

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DEMETRIUS HILL,

Plaintiff,

v.

**Civil Action No. 3:06cv136
(Judge Bailey)**

**WARDEN HAYNES, A.W. GILL,
WARDEN DRIVER, CAPT. ODDO,
LT. CLEMENS, LT. GIFFORD, LT.
TRAIT, C.O. SPOTLAN, FOSTER,
C.O. MORGAN, COUNSELOR
MORRERO AND ETRIS,**

Defendants.

**AMENDED¹ OPINION/REPORT AND RECOMMENDATION ON
PLAINTIFF'S MOTION FOR DECLARATORY RELIEF**

On December 27, 2010, the plaintiff filed a *pro se* Motion for Declaratory Relief.² [Dckt. 80]

In the motion, the plaintiff asserts that the Warden at his current place of incarceration “selectively withholds [his] legal documents[,] thus limiting his access to the courts and limiting his ability to properly prepare for hearings, responses, and pleadings . . .” *Id.* at 1. The plaintiff further asserts that his right to access the courts is fundamental, and that declaratory relief should not be declined simply because there is an equally effective remedy at law. *Id.* at 2. Thus, he seeks a declaratory judgment directing Warden Bledsoe to provide him access to his legal documents. *Id.*

Pursuant to 28 U.S.C. § 2201(a), “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may

¹This Opinion is amended solely to correct the location of the Lewisburg Penitentiary on page two. In all other respects, the Opinion remains the same.

²The plaintiff has since been appointed counsel.

declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” In this case, the plaintiff is incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania. Warden Bledsoe is the Warden of that facility, which is located within the jurisdiction of the United States District Court for the Middle District of Pennsylvania. Therefore, although the plaintiff has a case currently before this Court, his request for declaratory relief against Warden Bledsoe with regard to access to his legal documents is not properly before this Court. Accordingly, the under signed recommends that the plaintiff’s Motion for Declaratory Judgment [Dckt. 80] be **DENIED**.

Within fourteen (14) days after being served with a copy of this Opinion/Report and Recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also be submitted to the Honorable John Preston Bailey, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to counsel of record via electronic means.

DATED: May 19, 2011

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE